IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-09-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.28193 of 2007

M/s Orkayam Apparels
No.47(D), 4, Kangayam Main Road
Tirupur .. Petitioner.

Versus

The Deputy Commercial Tax Officer,
Tirupur (Central-I)
Tirupur .. Respondent.

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the respondent herein in TNGST.2402367/2002-2003 on his files and quash the impugned proceedings dated 12.01.2007 passed therein.

For petitioner : Mr.K.J.Chandran
For respondent : Mr.R.Mahadevan
Additional Government Pleader

O R D E R

Mr.R.Mahadevan, the learned Additional Government Pleader takes notice for the respondent.

2. With the consent of the learned counsels appearing on either side, the writ petition is taken up for final disposal.

3. It is submitted that the petitioner is a manufacturer of hosiery garments and is an assessee on the files of the respondent. In respect of the assessment year 2002-2003, the order of the assessment was made, on 12.1.2007 by the respondent in TNGST 2402367/2002-2003. At the time of the assessment, the petitioner had filed the day books, ledgers, purchase and sale bills. However, after verification of the accounts, the respondent had proposed to disallow the claim of exemption in respect of sales for want of export invoices, Bill of Lading etc. The said documents were filed by the petitioner and on

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verification, the respondent found the same to be in order and allowed exemption on a turn over of Rs.3,06,96,904/-. However, in respect of the proposal to impose tax on the cloth waste, sewing thread, packing materials and want of registration numbers of the dealer in respect of the seller for the purchase of the yarn, necessary particulars could not be collected and filed. In respect of sales of Addas garments, the respondent has proposed to tax at 4% on a turnover of Rs.6,00,000/-.

4. It is further submitted by the petitioner that in respect of disallowing of the claim of exemption, the respondent has no power to make any order as on 12.7.2007 after the introduction of VAT with effect from 1.1.2007. The State of Tamil Nadu introduced Section 12-C to The Tamil Nadu General Sales Tax Act, 1959,(hereinafter referred to as `the Act') with effect from 20.12.2006 by Act 37/2006. Accordingly, the time had been extended, till 31.3.2007, for production of the declaration forms and certificates as prescribed. Though the petitioner had time, till 31.3.2007, in respect of the claim of exemption/concessional rate of tax, the respondent has passed the impugned order, on 12.1.2007 itself. Hence, the petitioner had preferred the present writ petition stating that the impugned order passed by the respondent is illegal and invalid in the eye of law.

5. The learned counsel for the petitioner had also submitted that since the impugned order passed by the respondent, on 12.1.2007, is contrary to Section 12-C of the Act, it cannot be held to be valid.

6. Mr.R.Mahadevan, learned Additional Government Pleader appearing on behalf of the respondent has not refused the contentions raised on behalf of the petitioner.

7. In such circumstances, based on the submissions made by the learned counsels appearing for the parties concerned, the impugned order of the respondent, dated 12.1.2007, made in TNGST 2402367/2002-2003 is set aside.

8. The petitioner is to file all the necessary documents before the respondent, within 15 days from the date of receipt of a copy of this order and the respondent is to pass a fresh assessment order, with regard to the Assessment year 2002-2003, within a period of two weeks thereafter, after considering the objections raised by the petitioner and also by considering the documents filed on behalf of the petitioner.

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9. The writ petition is allowed with the above directions. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Deputy Commercial Tax Officer,
Tirupur (Central-1)
Tirupur

+1cc to Spl. Govt. Pleader Sr 55846

RA(CO)
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